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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/011,014	11/05/2001	Eugene C. Nelson	33033US1	7591
116	7590	07/10/2006	EXAMINER	CHOI, PETER H
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/011,014	NELSON, EUGENE C.
Examiner	Art Unit	
Peter Choi	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 April 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-5 and 7-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

1. The following is a **FINAL** office action upon examination of application number 10/011,014. Claims 1 and 4 have been canceled. Figures 4 and 14 and the disclosure have been amended. Claims 2-5 and 7-9 are pending in the application and have been examined on the merits discussed below.

### ***Priority***

2. Applicant is awarded the priority filing date of 11/03/00 and the claims will be examined accordingly.

### ***Drawings***

3. The objection to the drawings raised under 37 CFR 1.84(p)(5) are withdrawn in view of amendments to the specification supplied by the Applicant

4. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because of the following reasons:

- Figures 5-18 appear to be screen shots of the claimed invention. For the most part, reference characters within the body of the figure are difficult to decipher. This is due to the fact that, when scanned, the Figures are predominantly white,

gray, and black, making it difficult to distinguish reference characters. To make these features more visible, the Examiner suggests the Applicant resubmit the drawings in black and white (eliminating the gray color scale prominently featured in the figures).

Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Specification***

5. The previous objections to the disclosure are withdrawn in view of Applicant's amendments to the specification.

***Response to Arguments***

6. Applicant's arguments filed April 24, 2006 have been fully considered but they are not persuasive.

Applicant argues that there is no suggestion or motivation for one skilled in the art at the time the invention was made to combine Kraftson with Havens to arrive at the claimed invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Kraftson and Havens are directed towards evaluating and processing survey data to provide benchmark values. Kraftson and Havens were combined because Kraftson provides a networking infrastructure and graphical interface/display that would enable the use and practice of the invention. The ability to provide real time reports was not the reason relied upon by the Examiner to combine the Kraftson and Havens references; however, the benefits of real time information, results, and reports are notoriously old and well known (resulting in a zero latency enterprise, where decisions can be made based on the latest updated data) and would also be a persuasive motivation to combine.

Applicant asserts that Havens does not disclose or suggest selecting a measurement option that includes an outcome measurement category, a management topic and a performance measure.

The Examiner respectfully disagrees. The information criteria from Havens are a set of management topics, insofar that it encompasses a plurality of topics regarding the quality and accessibility of information. The worker criteria from Havens are a set of performance measures, insofar that it measures a plurality of worker abilities and competency. Both the information and worker criterion can be organized into a plurality of sectors, which has been taken to be outcome measurement categories.

Applicant argues that none of the references disclose or suggest “data information from a data collection including survey population characteristics, survey questions, and comparative practice information”.

The Examiner respectfully disagrees. Havens discloses that the survey data may also include a plurality of information criteria weights, information sector weights, worker criteria weights, and worker sector weights [Column 4, lines 58-65], which are taken to be survey questions, as they are the basis on which each survey worker is evaluated. Havens also discloses that information criteria ranks, worker criteria ranks, information criteria weights, worker criteria weights, information sector weights, and worker sector weights comprise the survey data [Column 6, lines 4-7]. The ranks constitute responses

to survey questions, as information criteria ranks are generated by individual surveyed workers and worker criteria ranks are generated by peers, managers, supervisors, or other associates of the surveyed workers [Column 4, lines 18-30]. Havens also discloses that the survey data also includes information concerning the surveyed workers (survey population characteristics) [Column 6, lines 7-11], and that the database includes benchmark database that contains one or more benchmark values (comparative practice information) associated with workers or groups of workers represented by survey data or with survey data generated as a result of past surveys (historical information) using workers and others within the same or other organizations or worker communities [Column 6, lines 34-48].

Applicant argues that the manipulation of survey data (from Havens) and the calculations (from Kraftson) do not include the steps of producing control charts, histograms and pie charts, or that measurements are included for Boolean search results and verbatims.

The Examiner respectfully disagrees. Kraftson teaches the use of histograms (pie charts are merely an alternative means of representing the same data) [see Figures 6 and 9A-9D] and control charts [Figures 9A-9D contain “upper” and “lower limits (positive and negative aggregated prime health activity)].

Applicant argues that there is no suggestion or motivation in Havens or Kraftson to perform a Boolean search.

The Examiner respectfully disagrees. The large amount of data stored in both the Havens and Kraftson references would suggest a need to quickly search for specific data. The use of Boolean search commands to search through databases is old and well known in the database arts.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havens (U.S Patent #5,909,669) in view of Kraftson et al. (U.S Patent #6,151,581).

As per claim 2, Havens teaches the system for evaluating survey information (**data is received and manipulated in order to generate comparison values**) of claim 9, wherein the data information may be stratified based on a selected population characteristic (**segmentor 26 examines survey data 15 according to one or more segmentation parameters 28**) [Column 7, lines 22-27; Claims 1, 10, and 16].

As per claim 3, although not taught by Havens, Kraftson et al. teaches the system for evaluating survey information of claim 9, wherein the graphical displays (**graphical report**) are selected by a user {using **Electronic Patient Data-collection System 103**} through the network (**uplink information is provided from host 107 to database processor 106 through a dial-up access employing modem 801**).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Havens to include the step of enabling users to select graphical displays, because the resulting invention would enable users to view specific graphical displays of information of interest to the user that are relevant and provide clarity.

As per claim 4, Havens teaches a method for evaluating survey information comprising the steps of:

electronically maintaining a database with data information from a data collection (**survey data 15 is retrieved from rank database 14, criteria weights 54 and 56 from weight database 16, benchmark values in benchmark value database 18**) [Column 6, lines 20-47, Column 9, lines 3-4, 12-18; Claims 1, 10, and 16; Figure 2];

selecting a measurement option (**information has a number of associated characteristics from which information criteria 4 may be selected; each worker or**

**group of workers has associated capabilities from which worker criteria 6 may be selected) [Column 2, lines 42-52; Figure 1];**

electronically retrieving from the data collection the information **(retriever 20 retrieves survey data from rank database 14)** for the selected measurement option [Column 10, lines 22-23; Claims 1, 10, and 16];

electronically performing calculations on the information **(calculator 38 receives and manipulates survey data segments 32, 34, and 36 in order to generate one or more comparison values 39; the high, low, mean, median, and standard deviation are calculated) [Column 8, lines 27-32, Column 10, lines 34-41; Claims 1, 10, and 16];** and

electronically controlling a display device **(output device 64)** to display a report based on the selected measurement option [Column 10, lines 12-13; Figure 2],

wherein selecting the measurement option comprises selecting from among measurement options including an outcome measurement category, a management topic and a performance measure **(information criteria 4 includes “applicability”, “understandability”, “credibility”, “locatability”, and “manipulability”; worker criteria 6 includes “information usage”, “handling competence”, “handling speed”, and “hassle generation”) [Column 3, line 53 – Column 4, line 24].**

Although Havens does not explicitly teach the step of displaying a graphical report, Kraftson et al. teaches graphical reports that summarize information to evaluate performance [Column 17, lines 16-26; Figures 6, 9A-9D].

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Havens to include the step of displaying graphical reports, because the resulting combination would ensure that that the information is summarized in a means that enables instant comparison, as graphical displays are more succinct and more clearly highlight performance information than reports, raw data, or calculations.

As per claim 5, although not taught by Havens, Kraftson et al. teaches a method according to claim 4, wherein the graphical report is provided to a user {using **Electronic Patient Data-collection System 103**} through a network (**uplink information is provided from host 107 to database processor 106 through a dial-up access employing modem 801**).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Havens to include the step of providing users with graphical displays through a network, because the resulting invention would enable the usage of Electronic Data Interchange techniques to quickly transmit data of interest to a

plurality of users simultaneously, in a clear and lucid form, eliminating the need to transmit said data to each interested party individually.

As per claim 7, Havens teaches a method according to claim 4, wherein the data information is stratified based on a selected population characteristic before a measurement option is selected **(validator 22 examines survey data 15 in accordance with one or more validation parameters 24; segmentor 26 examines survey data 15 according to one or more segmentation parameters 28)** [Column 7, lines 6-27, Claim 1].

As per claim 8, Havens teaches a computer readable medium including a computer program that causes a computer to evaluate survey information, the computer program causing the computer to perform the step of:

maintaining a database with data information from a data collection **(survey data 15 is retrieved from rank database 14, criteria weights 54 and 56 from weight database 16, benchmark values in benchmark value database 18)** [Column 6, lines 20-47, Column 9, lines 3-4, 12-18; Claims 1, 10, and 16; Figure 2];

performing calculations on the data information from the data collection **(calculator 38 receives and manipulates survey data segments 32, 34, and 36 in order to generate one or more comparison values 39; the high, low, mean, median, and standard deviation are calculated)** [Column 8, lines 27-32, Column 10, lines 34-41; Claims 1, 10, and 16]; and

displaying {using output device 64} a display {appearing on output device 64 of computer 60} indicating measurements from the data collection based on a selected population characteristics (comparison of comparison values and benchmark values) [Column 10, lines 12-13, 43-61; Figure 2].

Although Havens does not explicitly teach the step of displaying a graphical report, Kraftson et al. teaches graphical reports that summarize information to evaluate performance [Column 17, lines 16-26; Figures 6, 9A-9D].

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Havens to include the step of displaying graphical reports, because the resulting combination would ensure that that the information is summarized in a means that enables instant comparison, as graphical displays are more succinct and more clearly highlight performance information than reports, raw data, or calculations.

As per claim 9, Havens teaches a system for evaluating survey information comprising:

a storage device (database 12, including rank database 14, weight database 16, benchmark value 18) [Column 6, lines 20-47, Column 9, lines 3-4, 12-18; Claims 1, 10, and 16; Figure 2];

a display device (output device 64); and

a server (**system 10 may operate on one or more computers 60; computer 60**) [Column 10, line 9] programmed to:

maintain in the storage device a database (**database 12**) with data information from a data collection, wherein the data information includes survey population characteristics, survey questions, responses to survey questions, historical information, and comparative practice information (**collectively, information criteria ranks 50, worker criteria ranks 52, information criteria weights 54, worker criteria weights 56, information sector weights 55, and works sector weights 57 comprises the survey data; the survey data also includes information concerning the survey workers, worker associates, worker community, organization, and any other characteristic suitable to create a worker profile for each surveyed worker**);

perform calculations on the data information from the data collection (**calculator 38 receives and manipulates survey data segments 32, 34, and 36 in order to generate one or more comparison values 39; the high, low, mean, median, and standard deviation are calculated**) [Column 8, lines 27-32, Column 10, lines 34-41; Claims 1, 10, and 16]; and

produce on the display device graphical displays (**output device 64**) indicating measurements from the data collection based on selected population characteristics, wherein measurements are included for performance measures (**information criteria 4, worker criteria 6**), survey questions (**survey data**), comparative practice benchmarks (**benchmark database 18 contains**

**benchmark values representing any suitable mathematical or other manipulation of survey data 15 or information generated as a result of past surveys) [Column 3, lines 42-57, Column 6, lines 33-47, Column 10, lines 12-13; Figure 2].**

Havens does not teach the step of producing rating scales, control charts, histograms, and pie charts, boolean search results, of verbatims. However, Kraftson et al. teaches the step of rating scales (“**Very Satisfied**”, “**Satisfied**”, “**Neutral**”, “**Dissatisfied**”, or “**Very Dissatisfied**”), and verbatims (**Comments subfield of Appendix A**) [Column 6, lines 61-65, Columns 24-26].

Although neither Havens nor Kraftson et al. explicitly teaches the step of boolean search results, data is obtained in metrics (Yes/No, on a Likert scale of 1-5) that would enable a Boolean query of survey results to be performed {for example, percentage of respondents saying “Yes” or 5 or have performed a specific action or have more than 5 instances of an action, etc.}, thus meeting the limitation of the claim [Columns 29--36].

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Choi whose telephone number is (571) 272 6971. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peter Choi  
Examiner  
Art Unit 3623

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June 28, 2006

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